IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 33068 of 2006(J)

AGAINST THE ORDER IN EA 1936/04 IN EA 1412/04
IN EP 282/04 IN
OS.288/2000 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

FRANCIES S/O.PANIYAMPARAMBIL LONAPPAN,
THIRUTHYAPARAMBU DESOM, ALOOR VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENTS:

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1. VARKEY S/O. CHAKKUNNY,
KOOMAKKATTUKUNNU DESOM, MELOOR VILLAGE,
MUKUNDAPURAM TALUK.

2. LONAPPAN, S/O.CHAKKUNNY DO. DO.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.33068 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioners are decree holders in O.S.288/2000 on the file of Sub court, Irinjalakuda. E.P.282/02 was filed under Order XXI Rule 32 of Code of Civil Procedure alleging that respondents have violated the decree. Under Ext.P6 order, learned Sub Judge appointed a Commissioner to identify and demarcate the decree schedule property with the help of a village officer. Ext.P6 order is challenged in this petition filed under Article 227 of Constitution of India, contending that under Ext.P4 order learned Sub Judge had earlier rejected the very same contention and respondents are not entitled to re-agitate the question and in an execution petition alleging violation of the decree for injunction respondents are not entitled to dispute the identity which was earlier rejected under Ext.P4 order and therefore Ext.P6 order is to be quashed.

2. On hearing learned counsel appearing for

petitioner and going through Ext.P6 order, I do not find any infirmity in Ext.P6 order warranting interference in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. As per the decree petitioner was granted the right to remove granite from the decree schedule property, "till the last piece of granite remains in the property". Learned Sub Judge found that identity of the decree schedule property is a matter to be decided, as it goes to the very root of case. Argument of learned counsel appearing for petitioner was that it will be going behind the decree and executing court is not competent to do so and in view of Ext.P4 order, Ext.P6 order is not sustainable. On going though Ext.P4 order it is clear that the question of appointment of a commissioner was not considered at all. Hence Ext.P4 order does not invalidate Ext.P6 order. When the decree provides for a right to remove the granite stones till the last piece is removed, the question of the exact boundary of that property is very relevant. In such circumstance, the finding of the court that a commission is to be appointed to fix

the boundaries cannot be said either illegal or improper. On the facts of this case, I cannot agree with the argument addressed by the petitioner that the order is to be quashed. In any event, there are no grounds to interfere with Ext.P6 order in exercise of the extra ordinary jurisdiction of this court.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.